

110TH CONGRESS
2D SESSION

S. 2969

To amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 1, 2008

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans’ Medical Per-
5 sonnel Recruitment and Retention Act of 2008”.

1 **SEC. 2. ENHANCEMENT OF AUTHORITIES FOR RETENTION**
2 **OF MEDICAL PROFESSIONALS.**

3 (a) SECRETARIAL AUTHORITY TO EXTEND TITLE 38
4 STATUS TO ADDITIONAL POSITIONS.—

5 (1) IN GENERAL.—Paragraph (3) of section
6 7401 of title 38, United States Code, is amended by
7 striking “and blind rehabilitation outpatient special-
8 ists.” and inserting the following: “blind rehabilita-
9 tion outpatient specialists, and such other classes of
10 health care occupations as the Secretary considers
11 necessary for the recruitment and retention needs of
12 the Department subject to the following require-
13 ments:

14 “(A) Not later than 45 days before the
15 Secretary appoints any personnel for a class of
16 health care occupations that is not specifically
17 listed in this paragraph, the Secretary shall
18 submit to the Committee on Veterans’ Affairs
19 of the Senate, the Committee on Veterans’ Af-
20 fairs of the House of Representatives, and the
21 Office of Management and Budget notice of
22 such appointment.

23 “(B) Before submitting notice under sub-
24 paragraph (A), the Secretary shall solicit com-
25 ments from any labor organization representing

1 employees in such class and include such com-
 2 ments in such notice.”.

3 (2) APPOINTMENT OF NURSE ASSISTANTS.—

4 Such paragraph is further amended by inserting
 5 “nurse assistants,” after “licensed practical or voca-
 6 tional nurses,”.

7 (b) PROBATIONARY PERIODS FOR NURSES.—Section
 8 7403(b) of such title is amended—

9 (1) in paragraph (1), by striking “Appoint-
 10 ments” and inserting “Except as otherwise provided
 11 in this subsection, appointments”;

12 (2) by redesignating paragraph (2) as para-
 13 graph (4); and

14 (3) by inserting after paragraph (1) the fol-
 15 lowing new paragraphs:

16 “(2) An appointment of a nurse under this chapter,
 17 whether on a full-time basis or a part-time basis, shall be
 18 for a probationary period ending upon the completion by
 19 the person so appointed of 4,180 hours of work pursuant
 20 to such appointment.

21 “(3) An appointment described in subsection (a) on
 22 a part-time basis of a person who has previously served
 23 on a full-time basis for the probationary period for the
 24 position concerned shall be without a probationary pe-
 25 riod.”.

1 (c) PROHIBITION ON TEMPORARY PART-TIME NURSE
 2 APPOINTMENTS IN EXCESS OF 4,180 HOURS.—Section
 3 7405(f)(2) of such title is amended by inserting after
 4 “year” the following: “, except that a part-time appoint-
 5 ment of a nurse shall not exceed 4,180 hours”.

6 (d) WAIVER OF OFFSET FROM PAY FOR CERTAIN
 7 REEMPLOYED ANNUITANTS.—

8 (1) IN GENERAL.—Section 7405 of such title is
 9 amended by adding at the end the following:

10 “(g)(1) The Secretary may waive the application of
 11 sections 8344 and 8468 of title 5 (relating to annuities
 12 and pay on reemployment) or any other similar provision
 13 of law under a Government retirement system on a case-
 14 by-case basis for an annuitant reemployed on a temporary
 15 basis under the authority of subsection (a) in a position
 16 described under paragraph (1) of that subsection.

17 “(2) An annuitant to whom a waiver under para-
 18 graph (1) is in effect shall not be considered an employee
 19 for purposes of any Government retirement system.

20 “(3) An annuitant to whom a waiver under para-
 21 graph (1) is in effect shall be subject to the provisions
 22 of chapter 71 of title 5 (including all labor authority and
 23 labor representative collective bargaining agreements) ap-
 24 plicable to the position to which appointed.

25 “(4) In this subsection:

1 “(A) The term ‘annuitant’ means an annuitant
2 under a Government retirement system.

3 “(B) The term ‘employee’ has the meaning
4 under section 2105 of title 5.

5 “(C) The term ‘Government retirement system’
6 means a retirement system established by law for
7 employees of the Government of the United States.”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on the date that
10 is six months after the date of the enactment of this
11 Act, and shall apply to pay periods beginning on or
12 after such effective date.

13 (e) MINIMUM RATE OF BASIC PAY FOR APPOINTEES
14 TO THE OFFICE OF THE UNDER SECRETARY FOR
15 HEALTH SET TO LOWEST RATE OF BASIC PAY PAYABLE
16 FOR A SENIOR EXECUTIVE SERVICE POSITION.—

17 (1) IN GENERAL.—Section 7404(a) of such title
18 is amended—

19 (A) by striking “The annual” and insert-
20 ing “(1) The annual”;

21 (B) by striking “The pay” and inserting
22 the following:

23 “(2) The pay”;

1 (C) by striking “under the preceding sen-
 2 tence” and inserting “under paragraph (1)”;
 3 and

4 (D) by adding at the end the following:

5 “(3) The minimum rate of basic pay for a position
 6 to which an Executive order applies under paragraph (1)
 7 and is not described by paragraph (2) may not be less
 8 than the lowest rate of basic pay payable for a Senior Ex-
 9 ecutive Service position under section 5382 of title 5.”.

10 (2) EFFECTIVE DATE.—The amendments made
 11 by paragraph (1) shall take effect on the first day
 12 of the first pay period beginning after the day that
 13 is 180 days after the date of the enactment of this
 14 Act.

15 (f) COMPARABILITY PAY PROGRAM FOR APPOINTEES
 16 TO THE OFFICE OF THE UNDER SECRETARY FOR
 17 HEALTH.—Section 7410 of such title is amended—

18 (1) by striking “The Secretary may” and in-
 19 serting “(a) IN GENERAL.—The Secretary may”;
 20 and

21 (2) by adding at the end the following new sub-
 22 section:

23 “(b) COMPARABILITY PAY FOR APPOINTEES TO THE
 24 OFFICE OF THE UNDER SECRETARY FOR HEALTH.—(1)
 25 The Secretary may authorize the Under Secretary for

1 Health to provide comparability pay of not more than
2 \$100,000 per year to individuals of the Veterans Health
3 Administration appointed under section 7306 of this title
4 who are not physicians or dentists to achieve annual pay
5 levels for such individuals that are comparable with annual
6 pay levels of individuals with similar positions in the pri-
7 vate sector.

8 “(2) Comparability pay under paragraph (1) for an
9 individual is in addition to all other pay, awards, and per-
10 formance bonuses paid to such individual under this title.

11 “(3) Except as provided in paragraph (4), com-
12 parability pay under paragraph (1) for an individual shall
13 be considered basic pay for all purposes, including retire-
14 ment benefits under chapters 83 and 84 of title 5, and
15 other benefits.

16 “(4) Comparability pay under paragraph (1) for an
17 individual shall not be considered basic pay for purposes
18 of adverse actions under subchapter V of this chapter.

19 “(5) Comparability pay under paragraph (1) may not
20 be awarded to an individual in an amount that would re-
21 sult in an aggregate amount of pay (including bonuses and
22 awards) received by such individual in a year under this
23 title that is greater than the annual pay of the Presi-
24 dent.”.

1 (g) SPECIAL INCENTIVE PAY FOR DEPARTMENT
2 PHARMACIST EXECUTIVES.—Section 7410 of such title,
3 as amended by subsection (f), is further amended by add-
4 ing at the end the following new subsection:

5 “(c) SPECIAL INCENTIVE PAY FOR DEPARTMENT
6 PHARMACIST EXECUTIVES.—(1) In order to recruit and
7 retain highly qualified Department pharmacist executives,
8 the Secretary may authorize the Under Secretary for
9 Health to pay special incentive pay of not more than
10 \$40,000 per year to an individual of the Veterans Health
11 Administration who is a pharmacist executive.

12 “(2) In determining whether and how much special
13 pay to provide to such individual, the Under Secretary
14 shall consider the following:

15 “(A) The grade and step of the position of the
16 individual.

17 “(B) The scope and complexity of the position
18 of the individual.

19 “(C) The personal qualifications of the indi-
20 vidual.

21 “(D) The characteristics of the labor market
22 concerned.

23 “(E) Such other factors as the Secretary con-
24 siders appropriate.

1 “(3) Special incentive pay under paragraph (1) for
 2 an individual is in addition to all other pay (including
 3 basic pay) and allowances to which the individual is enti-
 4 tled.

5 “(4) Except as provided in paragraph (5), special in-
 6 centive pay under paragraph (1) for an individual shall
 7 be considered basic pay for all purposes, including retire-
 8 ment benefits under chapters 83 and 84 of title 5, and
 9 other benefits.

10 “(5) Special incentive pay under paragraph (1) for
 11 an individual shall not be considered basic pay for pur-
 12 poses of adverse actions under subchapter V of this chap-
 13 ter.

14 “(6) Special incentive pay under paragraph (1) may
 15 not be awarded to an individual in an amount that would
 16 result in an aggregate amount of pay (including bonuses
 17 and awards) received by such individual in a year under
 18 this title that is greater than the annual pay of the Presi-
 19 dent.”.

20 (h) PAY FOR PHYSICIANS AND DENTISTS.—

21 (1) NON-FOREIGN COST OF LIVING ADJUST-
 22 MENT ALLOWANCE.—Section 7431(b) of such title is
 23 amended by adding at the end the following:

24 “(5) The non-foreign cost of living adjustment
 25 allowance authorized under section 5941 of title 5

1 for physicians and dentists whose pay is set under
 2 this section shall be determined as a percentage of
 3 base pay only.”.

4 (2) MARKET PAY DETERMINATIONS FOR PHYSI-
 5 CIANS AND DENTISTS IN ADMINISTRATIVE OR EXEC-
 6 UTIVE LEADERSHIP POSITIONS.—Section
 7 7431(c)(4)(B)(i) of such title is amended by adding
 8 at the end the following: “The Secretary may ex-
 9 empt physicians and dentists occupying administra-
 10 tive or executive leadership positions from the re-
 11 quirements of the previous sentence.”.

12 (3) EXCEPTION TO PROHIBITION ON REDUC-
 13 TION OF MARKET PAY.—Section 7431(c)(7) of such
 14 title is amended by striking “concerned.” and insert-
 15 ing “concerned, unless there is a change in board
 16 certification or reduction of privileges.”.

17 (i) ADJUSTMENT OF PAY CAP FOR NURSES.—Sec-
 18 tion 7451(c)(2) of such title is amended by striking “title
 19 5” and inserting “title 5 or the level of GS–15 as pre-
 20 scribed under section 5332 of such title, whichever is
 21 greater”.

22 (j) EXEMPTION FOR CERTIFIED REGISTERED NURSE
 23 ANESTHETISTS FROM LIMITATION ON AUTHORIZED COM-
 24 PETITIVE PAY.—Section 7451(c)(2) of such title is further
 25 amended by adding at the end the following new sentence:

1 “The maximum rate of basic pay for a grade for the posi-
 2 tion of certified registered nurse anesthetist pursuant to
 3 an adjustment under subsection (d) may exceed the max-
 4 imum rate otherwise provided in the preceding sentence.”.

5 (k) LOCALITY PAY SCALE COMPUTATIONS.—

6 (1) EDUCATION, TRAINING, AND SUPPORT FOR
 7 FACILITY DIRECTORS IN WAGE SURVEYS.—Section
 8 7451(d)(3) of such title is amended by adding at the
 9 end the following new subparagraph:

10 “(F) The Under Secretary for Health shall provide
 11 appropriate education, training, and support to directors
 12 of Department health-care facilities in the conduct and use
 13 of surveys under this paragraph.”.

14 (2) INFORMATION ON METHODOLOGY USED IN
 15 WAGE SURVEYS.—Section 7451(e)(4) of such title is
 16 amended—

17 (A) by redesignating subparagraph (D) as
 18 subparagraph (E); and

19 (B) by inserting after subparagraph (C)
 20 the following new subparagraph (D):

21 “(D) In any case in which the director conducts
 22 such a wage survey during the period covered by the
 23 report and makes adjustment in rates of basic pay
 24 applicable to one or more covered positions at the fa-

1 cility, information on the methodology used in mak-
 2 ing such adjustment or adjustments.”.

3 (3) DISCLOSURE OF INFORMATION TO PERSONS
 4 IN COVERED POSITIONS.—Section 7451(e) of such
 5 title is further amended by adding at the end the
 6 following new paragraph:

7 “(6)(A) Upon the request of an individual described
 8 in subparagraph (B) for a report provided under para-
 9 graph (4) with respect to a Department health-care facil-
 10 ity, the Under Secretary for Health or the director of such
 11 facility shall provide to the individual the most current re-
 12 port for such facility provided under such paragraph.

13 “(B) An individual described in this subparagraph
 14 is—

15 “(i) an individual in a covered position at a De-
 16 partment health-care facility; or

17 “(ii) a representative of the labor organization
 18 representing that individual who is designated by
 19 that individual to make the request.”.

20 (l) INCREASED LIMITATION ON SPECIAL PAY FOR
 21 NURSE EXECUTIVES.—Section 7452(g)(2) of such title is
 22 amended by striking “\$25,000” and inserting
 23 “\$100,000”.

24 (m) ELIGIBILITY OF PART-TIME NURSES FOR ADDI-
 25 TIONAL NURSE PAY.—

1 (1) IN GENERAL.—Section 7453 of such title is
2 amended—

3 (A) in subsection (a), by striking “a
4 nurse” and inserting “a full-time nurse or part-
5 time nurse”;

6 (B) in subsection (b)—

7 (i) in the first sentence—

8 (I) by striking “on a tour of
9 duty”;

10 (II) by striking “on such tour”;

11 and

12 (III) by striking “of such tour”

13 and inserting “of such service”; and

14 (ii) in the second sentence, by striking
15 “of such tour” and inserting “of such serv-
16 ice”;

17 (C) in subsection (c)—

18 (i) by striking “on a tour of duty”;

19 and

20 (ii) by striking “on such tour”; and

21 (D) in subsection (e)—

22 (i) in paragraph (1), by striking
23 “eight hours in a day” and inserting
24 “eight consecutive hours”; and

1 (ii) in paragraph (5)(A), by striking
 2 “tour of duty” and inserting “period of
 3 service”.

4 (2) EXCLUSION OF APPLICATION OF ADDI-
 5 TIONAL NURSE PAY PROVISIONS TO CERTAIN ADDI-
 6 TIONAL EMPLOYEES.—Section 7454(b)(3) of such
 7 title is amended to read as follows:

8 “(3) Employees appointed under section 7408 of this
 9 title performing service on a tour of duty, any part of
 10 which is within the period commencing at midnight Friday
 11 and ending at midnight Sunday, shall receive additional
 12 pay in addition to the rate of basic pay provided such em-
 13 ployees for each hour of service on such tour at a rate
 14 equal to 25 percent of such employee’s hourly rate of basic
 15 pay.”.

16 (n) EXEMPTION OF ADDITIONAL NURSE POSITIONS
 17 FROM LIMITATION ON INCREASE IN RATES OF BASIC
 18 PAY.—Section 7455(c)(1) of such title is amended by in-
 19 serting after “nurse anesthetists,” the following: “licensed
 20 practical nurses, licensed vocational nurses, and nursing
 21 positions otherwise covered by title 5,”.

22 **SEC. 3. LIMITATIONS ON OVERTIME DUTY, WEEKEND DUTY,**
 23 **AND ALTERNATIVE WORK SCHEDULES FOR**
 24 **NURSES.**

25 (a) OVERTIME DUTY.—

1 (1) IN GENERAL.—Subchapter IV of chapter 74
 2 of title 38, United States Code, is amended by add-
 3 ing at the end the following new section:

4 **“§ 7459. Nurses: special rules for overtime duty**

5 “(a) LIMITATION.—Except as provided in subsection
 6 (c), the Secretary may not require a nurse to work more
 7 than 40 hours (or 24 hours if such nurse is covered under
 8 section 7456) in an administrative work week or more
 9 than eight consecutive hours (or 12 hours if such nurse
 10 is covered under section 7456 or 7456A).

11 “(b) VOLUNTARY OVERTIME.—(1) A nurse may on
 12 a voluntary basis elect to work hours otherwise prohibited
 13 by subsection (a).

14 “(2) The refusal of a nurse to work hours prohibited
 15 by subsection (a) shall not be grounds to discriminate
 16 (within the meaning of section 704(a) of the Civil Rights
 17 Act of 1964 (42 U.S.C. 2000e–3(a))) against the nurse,
 18 dismissal or discharge of the nurse, or any other adverse
 19 personnel action against the nurse.

20 “(c) OVERTIME UNDER EMERGENCY CIR-
 21 CUMSTANCES.—(1) Subject to paragraph (2), the Sec-
 22 retary may require a nurse to work hours otherwise pro-
 23 hibited by subsection (a) if—

1 “(A) the work is a consequence of an emer-
2 gency that could not have been reasonably antici-
3 pated;

4 “(B) the emergency is non-recurring and is not
5 caused by or aggravated by the inattention of the
6 Secretary or lack of reasonable contingency planning
7 by the Secretary;

8 “(C) the Secretary has exhausted all good faith,
9 reasonable attempts to obtain voluntary workers;

10 “(D) the nurse has critical skills and expertise
11 that are required for the work; and

12 “(E) the work involves work for which the
13 standard of care for a patient assignment requires
14 continuity of care through completion of a case,
15 treatment, or procedure.

16 “(2) A nurse may not be required to work hours
17 under this subsection after the requirement for a direct
18 role by the nurse in responding to medical needs resulting
19 from the emergency ends.

20 “(d) NURSE DEFINED.—In this section, the term
21 ‘nurse’ includes the following;

22 “(1) A registered nurse.

23 “(2) A licensed practical or vocational nurse.

24 “(3) A nurse assistant appointed under this
25 chapter or title 5.

1 “(4) Any other nurse position designated by the
2 Secretary for purposes of this section.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions at the beginning of chapter 74 of such title is
5 amended by inserting after the item relating to sec-
6 tion 7458 the following new item:

“7459. Nurses: special rules for overtime duty.”.

7 (b) WEEKEND DUTY.—Section 7456 of such title is
8 amended—

9 (1) in subsection (a) by striking “regularly
10 scheduled 12-hour tour of duty” and inserting
11 “scheduled 12-hour periods of service”;

12 (2) in subsection (b)—

13 (A) in paragraph (2), by striking “service
14 performed as part of a regularly scheduled 12-
15 hour tour of duty” and inserting “any service
16 performed”; and

17 (B) in paragraph (3)—

18 (i) in subparagraph (A), by striking
19 “regularly scheduled two 12-hour tours of
20 duty” and inserting “scheduled 12-hour
21 period of service”;

22 (ii) in subparagraph (B), by striking
23 “regularly scheduled two 12-hour tour of
24 duty” and inserting “scheduled 12-hour
25 period of service”; and

- 1 (iii) in subparagraph (C), by striking
 2 “regularly scheduled two 12-hour tours of
 3 duty” and inserting “scheduled two 12-
 4 hour periods of service”;
 5 (3) by striking subsection (c); and
 6 (4) by redesignating subsection (d) as (c).

7 (c) ALTERNATE WORK SCHEDULES.—

8 (1) IN GENERAL.—Section 7456A(b)(1)(A) of
 9 such title is amended by striking “three regularly
 10 scheduled” and all that follows through the period at
 11 the end and inserting “six regularly scheduled 12-
 12 hour periods of service within a pay period shall be
 13 considered for all purposes to have worked a full 80-
 14 hour pay period.”.

15 (2) CONFORMING AMENDMENTS.—Section
 16 7456A(b) of such title is amended—

17 (A) in the subsection heading, by striking
 18 “36/40” and inserting “72/80”;

19 (B) in paragraph (2)—

20 (i) in subparagraph (A), by striking
 21 “40-hour basic work week” and inserting
 22 “80-hour pay period”;

23 (ii) in subparagraph (B), by striking
 24 “regularly scheduled 36-hour tour of duty
 25 within the work week” and inserting

1 “scheduled 72-hour period of service within
2 the bi-weekly pay period”;

3 (iii) in subparagraph (C)—

4 (I) in clause (i), by striking “reg-
5 ularly scheduled 36-hour tour of duty
6 within an administrative work week”
7 and inserting “scheduled 72-hour pe-
8 riod of service within an administra-
9 tive pay period”;

10 (II) in clause (ii), by striking
11 “regularly scheduled 12-hour tour of
12 duty” and inserting “scheduled 12-
13 hour period of service”; and

14 (III) in clause (iii), by striking
15 “regularly scheduled 36-hour tour of
16 duty work week” and inserting
17 “scheduled 72-hour period of service
18 pay period”; and

19 (iv) in subparagraph (D), by striking
20 “regularly scheduled 12-hour tour of duty”
21 and inserting “scheduled 12-hour period of
22 service”; and

23 (C) in paragraph (3), by striking “regu-
24 larly scheduled 12-hour tour of duty” and in-
25 serting “scheduled 12-hour period of service”.

1 **SEC. 4. IMPROVEMENTS TO CERTAIN EDUCATIONAL AS-**
 2 **SISTANCE PROGRAMS.**

3 (a) REINSTATEMENT OF HEALTH PROFESSIONALS
 4 EDUCATIONAL ASSISTANCE SCHOLARSHIP PROGRAM.—

5 (1) IN GENERAL.—Section 7618 of title 38,
 6 United States Code, is amended by striking “Decem-
 7 ber 31, 1998” and inserting “December 31, 2013”.

8 (2) EXPANSION OF ELIGIBILITY REQUIRE-
 9 MENTS.—Paragraph (2) of section 7612(b) of such
 10 title is amended by striking “(under section” and all
 11 that follows through the period at the end and in-
 12 serting the following: “as an appointee under para-
 13 graph (1) or (3) of section 7401 of this title.”.

14 (b) IMPROVEMENTS TO EDUCATION DEBT REDUC-
 15 TION PROGRAM.—

16 (1) INCLUSION OF EMPLOYEE RETENTION AS
 17 PURPOSE OF PROGRAM.—Section 7681(a)(2) of such
 18 title is amended by inserting “and retention” after
 19 “recruitment” the first time it appears.

20 (2) ELIGIBILITY.—Section 7682 of such title is
 21 amended—

22 (A) in subsection (a)(1), by striking “a re-
 23 cently appointed” and inserting “an”; and

24 (B) by striking subsection (c).

25 (3) MAXIMUM AMOUNTS OF ASSISTANCE.—Sec-
 26 tion 7683(d)(1) of such title is amended—

1 (A) by striking “\$44,000” and inserting
2 “\$60,000”; and

3 (B) by striking “\$10,000” and inserting
4 “\$12,000”.

5 (c) LOAN REPAYMENT PROGRAM FOR CLINICAL RE-
6 SEARCHERS FROM DISADVANTAGED BACKGROUNDS.—

7 (1) IN GENERAL.—The Secretary of Veterans
8 Affairs may, in consultation with the Secretary of
9 Health and Human Services, utilize the authorities
10 available in section 487E of the Public Health Serv-
11 ice Act (42 U.S.C. 288–5) for the repayment of the
12 principal and interest of educational loans of appro-
13 priately qualified health professionals who are from
14 disadvantaged backgrounds in order to secure clin-
15 ical research by such professionals for the Veterans
16 Health Administration.

17 (2) LIMITATIONS.—The exercise by the Sec-
18 retary of Veterans Affairs of the authorities referred
19 to in paragraph (1) shall be subject to the conditions
20 and limitations specified in paragraphs (2) and (3)
21 of section 487E(a) of the Public Health Service Act
22 (42 U.S.C. 288–5(2) and (3)).

23 (3) FUNDING.—Amounts for the repayment of
24 principal and interest of educational loans under this
25 subsection shall be derived from amounts available

- 1 to the Secretary of Veterans for the Veterans Health
- 2 Administration for Medical Services.

